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[CAPTION PAGE CONTINUED ON NEXT PAGE]

Attorneys for Defendants OPENAI, INC., a Delaware nonprofit corporation, OPENAI, L.P., a Delaware limited partnership, OPENAI OPCO, L.L.C., a Delaware limited liability company, OPENAI GP, L.L.C., a Delaware limited liability company, OPENAI STARTUP FUND GP I, L.L.C., a Delaware limited liability company, OPENAI STARTUP FUND I, L.P., a Delaware limited partnership, OPENAI STARTUP FUND MANAGEMENT, LLC, a Delaware limited liability company

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

J. DOE 1 and J. DOE 2, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

GITHUB, INC., a Delaware corporation;
 MICROSOFT CORPORATION, a Washington corporation; OPENAI, INC., a Delaware nonprofit corporation; OPENAI, L.P., a Delaware limited partnership; OPENAI GP, L.L.C., a Delaware limited liability company; OPENAI STARTUP FUND GP I, L.L.C., a Delaware limited liability company; OPENAI STARTUP FUND I, L.P., a Delaware limited partnership; OPENAI STARTUP FUND MANAGEMENT, LLC, a Delaware limited liability company,

Defendants.

Case No. 4:22-cv-06823-JST
 Case No. 4:22-cv-07074-JST

Hon. Jon S. Tigar

**NOTICE OF SUPPLEMENTAL
 AUTHORITY RELEVANT TO
 DEFENDANT OPENAI'S MOTION
 TO DISMISS FIRST AMENDED
 COMPLAINT**

NOTICE OF SUPPLEMENTAL AUTHORITY
 RELEVANT TO DEFENDANT OPENAI'S MOTION
 TO DISMISS FIRST AMENDED COMPLAINT
 CASE NO. 3:22-CV-07074-JST

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28 NOTICE OF SUPPLEMENTAL AUTHORITY
RELEVANT TO DEFENDANT OPENAI'S MOTION
TO DISMISS FIRST AMENDED COMPLAINT
CASE NO. 3:22-CV-07074-JST

1 Defendants OpenAI, Inc., OpenAI, L.P., OpenAI OpCp, L.L.C., OpenAI GP, L.L.C.,
2 OpenAI Startup Fund GP I, L.L.C., OpenAI Startup Fund I, L.P. and OpenAI Startup Fund
3 Management, LLC (collectively, “OpenAI”) hereby notify the Court of newly issued authority
4 relevant to their Motion to Dismiss First Amended Complaint (ECF Nos. 109 & 110). On
5 October 30, 2023, the United States District Court for the Northern District of California issued
6 an order dismissing a number of related claims, including claims for direct and vicarious
7 copyright infringement, claims under Section 1202 of the Digital Millennium Copyright Act
8 (DMCA), and claims under California’s Unfair Competition Law. Order on Def’s Motions to
9 Dismiss and Strike, *Andersen et al. v. Stability AI, Inc. et al.*, No. 23-cv-00201, ECF No. 117 (N.
10 D. Cal. Oct. 30, 2023) (Orrick, J.). In pertinent part, the Court found that (a) “it is simply not
11 plausible” that every output of a Generative AI model constitutes a derivative work absent
12 “‘substantial similarity’ type allegations,” *id.* at 12, and (b) “[i]n order to state [a] claim [under
13 Section 1202 of the DMCA], each plaintiff must identify the exact type of CMI included” in their
14 works and “allege plausible facts” regarding how that CMI was allegedly removed or altered, *id.*
15 at 18. A true and correct copy of the order is attached hereto as Exhibit 1.

1 Dated: November 1, 2023

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3 By: /s/ Joseph C. Gratz

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